

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 2179  
OFFERED BY MR. OXLEY**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Securities Fraud De-  
3 terrence and Investor Restitution Act of 2004”.

**4 SEC. 2. RECOVERY BY COMMISSION OF SECURITIES LAW  
5 JUDGMENTS.**

6       Title III of the Sarbanes-Oxley Act of 2002 is amend-  
7 ed by adding after section 308 (15 U.S.C. 7246) the fol-  
8 lowing new section:

**9 “SEC. 309. RECOVERY OF SECURITIES LAW JUDGMENTS;  
10 REMOVAL OF STATE LAW IMPEDIMENTS.**

11       “(a) REMOVAL OF STATE LAW IMPEDIMENTS.—The  
12 Commission’s authority to enforce, collect upon, or other-  
13 wise satisfy in a Federal or State court a judgment or  
14 order obtained, either by litigation or settlement, in any  
15 judicial action or administrative proceeding under the se-  
16 curities laws against any person based upon an alleged  
17 fraudulent, deceptive, or manipulative act or practice in  
18 violation of such laws, or the rules and regulations there-



1 under, or against any gratuitous or fraudulent transferee,  
2 shall not be subject to—

3 “(1) a debtor’s election to exempt property  
4 under State or local law pursuant to section  
5 3014(a)(2) of title 28, United States Code; or

6 “(2) any homestead provision of any State con-  
7 stitution or any other State law that exempts or pro-  
8 tects property from foreclosure, forced sale, or any  
9 other procedure to satisfy a judgment or order under  
10 any process of court for the payment of debts.

11 “(b) DEFINITIONS.—For purposes of subsection  
12 (a)—

13 “(1) a ‘gratuitous transferee’ is any person to  
14 whom an ownership interest in property is trans-  
15 ferred without adequate consideration; and

16 “(2) a ‘fraudulent transferee’ is any person lia-  
17 ble to the Commission under applicable fraudulent  
18 transfer laws.”.

19 **SEC. 3. CIVIL ENFORCEMENT PROVISIONS.**

20 (a) AUTHORITY TO IMPOSE CIVIL PENALTIES IN  
21 CEASE AND DESIST PROCEEDINGS.—

22 (1) UNDER THE SECURITIES ACT OF 1934.—  
23 Section 8A of the Securities Act of 1933 (15 U.S.C.  
24 77h–1) is amended by adding at the end the fol-  
25 lowing new subsection:



1 “(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

2 “(1) GROUNDS FOR IMPOSING.—In any cease-  
3 and-desist proceeding under subsection (a), the  
4 Commission may impose a civil penalty on a person  
5 if it finds, on the record after notice and opportunity  
6 for hearing, that—

7 “(A) such person—

8 “(i) is violating or has violated any  
9 provision of this title, or any rule or regu-  
10 lation thereunder; or

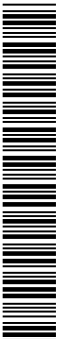
11 “(ii) is or was a cause of the violation  
12 of any provision of this title, or any rule or  
13 regulation thereunder; and

14 “(B) such penalty is in the public interest.

15 “(2) MAXIMUM AMOUNT OF PENALTY.—

16 “(A) FIRST TIER.—The maximum amount  
17 of penalty for each act or omission described in  
18 paragraph (1) shall be \$100,000 for a natural  
19 person or \$250,000 for any other person.

20 “(B) SECOND TIER.—Notwithstanding  
21 paragraph (A), the maximum amount of pen-  
22 alty for each such act or omission shall be  
23 \$500,000 for a natural person or \$1,000,000  
24 for any other person if the act or omission de-  
25 scribed in paragraph (1) involved fraud, deceit,



1 manipulation, or deliberate or reckless dis-  
2 regard of a regulatory requirement.

3 “(C) THIRD TIER.—Notwithstanding para-  
4 graphs (A) and (B), the maximum amount of  
5 penalty for each such act or omission shall be  
6 \$1,000,000 for a natural person or \$2,000,000  
7 for any other person if—

8 “(i) the act or omission described in  
9 paragraph (1) involved fraud, deceit, ma-  
10 nipulation, or deliberate or reckless dis-  
11 regard of a regulatory requirement; and

12 “(ii) such act or omission directly or  
13 indirectly resulted in substantial losses or  
14 created a significant risk of substantial  
15 losses to other persons or resulted in sub-  
16 stantial pecuniary gain to the person who  
17 committed the act or omission.

18 “(3) EVIDENCE CONCERNING ABILITY TO  
19 PAY.—In any proceeding in which the Commission  
20 may impose a penalty under this section, a respond-  
21 ent may present evidence of the respondent’s ability  
22 to pay such penalty. The Commission may, in its  
23 discretion, consider such evidence in determining  
24 whether such penalty is in the public interest. Such  
25 evidence may relate to the extent of such person’s



1 ability to continue in business and the collectability  
2 of a penalty, taking into account any other claims of  
3 the United States or third parties upon such per-  
4 son's assets and the amount of such person's as-  
5 sets.”.

6 (2) UNDER THE SECURITIES EXCHANGE ACT  
7 OF 1934.—Subsection (a) of section 21B of the Se-  
8 curities Exchange Act of 1934 (15 U.S.C. 78u–2(a))  
9 is amended—

10 (A) by striking “(a) Commission Authority  
11 To Assess Money Penalties.—In any pro-  
12 ceeding” and inserting the following:

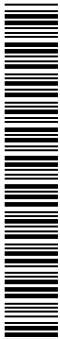
13 “(a) COMMISSION AUTHORITY TO ASSESS MONEY  
14 PENALTIES.—

15 “(1) IN GENERAL.—In any proceeding”;

16 (B) by redesignating paragraphs (1)  
17 through (4) of such subsection as subpara-  
18 graphs (A) through (D), respectively and mov-  
19 ing such redesignated subparagraphs 2 ems to  
20 the right; and

21 (C) by adding at the end of such sub-  
22 section the following new paragraph:

23 “(2) CEASE-AND-DESIST PROCEEDINGS.—In  
24 any proceeding instituted pursuant to section 21C of  
25 this title against any person, the Commission may



1 impose a civil penalty if it finds, on the record after  
2 notice and opportunity for hearing, that such  
3 person—

4 “(A) is violating or has violated any provi-  
5 sion of this title, or any rule or regulation  
6 thereunder; or

7 “(B) is or was a cause of the violation of  
8 any provision of this title, or any rule or regula-  
9 tion thereunder.”.

10 (3) UNDER THE INVESTMENT COMPANY ACT OF  
11 1940.—Paragraph (1) of section 9(d) of the Invest-  
12 ment Company Act of 1940 (15 U.S.C. 80a–  
13 9(d)(1))) is amended—

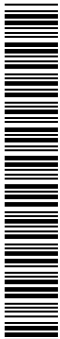
14 (A) by striking “(1) Authority of commis-  
15 sion.—In any proceeding” and inserting the fol-  
16 lowing:

17 “(1) AUTHORITY OF COMMISSION.—

18 “(A) IN GENERAL.—In any proceeding”;

19 (B) by redesignating subparagraphs (A)  
20 through (C) of such paragraph as clauses (i)  
21 through (iii), respectively and by moving such  
22 redesignated clauses 2 ems to the right; and

23 (C) by adding at the end of such para-  
24 graph the following new subparagraph:



1 “(B) CEASE-AND-DESIST PROCEEDINGS.—

2 In any proceeding instituted pursuant to sub-  
3 section (f) against any person, the Commission  
4 may impose a civil penalty if it finds, on the  
5 record after notice and opportunity for hearing,  
6 that such person—

7 “(i) is violating or has violated any  
8 provision of this title, or any rule or regu-  
9 lation thereunder; or

10 “(ii) is or was a cause of the violation  
11 of any provision of this title, or any rule or  
12 regulation thereunder.”.

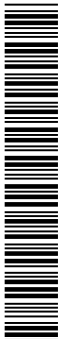
13 (4) UNDER THE INVESTMENT ADVISERS ACT OF  
14 1940.—Paragraph (1) of section 203(i) of the In-  
15 vestment Advisers Act of 1940 (15 U.S.C. 80b-  
16 3(i)(1)) is amended—

17 (A) by striking “(1) Authority of commis-  
18 sion.—In any proceeding” and inserting the fol-  
19 lowing:

20 “(1) AUTHORITY OF COMMISSION.—

21 “(A) IN GENERAL.—In any proceeding”;

22 (B) by redesignating subparagraphs (A)  
23 through (D) of such paragraph as clauses (i)  
24 through (iv), respectively and moving such re-  
25 designated clauses 2 ems to the right; and



1 (C) by adding at the end of such para-  
2 graph the following new subparagraph:

3 “(B) CEASE-AND-DESIST PROCEEDINGS.—

4 In any proceeding instituted pursuant to sub-  
5 section (k) against any person, the Commission  
6 may impose a civil penalty if it finds, on the  
7 record after notice and opportunity for hearing,  
8 that such person—

9 “(i) is violating or has violated any  
10 provision of this title, or any rule or regu-  
11 lation thereunder; or

12 “(ii) is or was a cause of the violation  
13 of any provision of this title, or any rule or  
14 regulation thereunder.”.

15 (b) INCREASED MAXIMUM CIVIL MONEY PEN-  
16 ALTIES.—

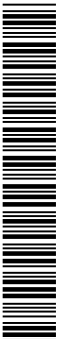
17 (1) SECURITIES ACT OF 1933.—Section  
18 20(d)(2) of the Securities Act of 1933 (15 U.S.C.  
19 77t(d)(2)) is amended—

20 (A) in subparagraph (A)(i)—

21 (i) by striking “\$5,000” and inserting  
22 “\$100,000”; and

23 (ii) by striking “\$50,000” and insert-  
24 ing “\$250,000”;

25 (B) in subparagraph (B)(i)—





1 (i) by striking “\$50,000” and insert-  
2 ing “\$500,000”; and

3 (ii) by striking “\$250,000” and in-  
4 serting “\$1,000,000”; and

5 (C) in subparagraph (C)(i)—

6 (i) by striking “\$100,000” and insert-  
7 ing “\$1,000,000”; and

8 (ii) by striking “\$500,000” and in-  
9 serting “\$2,000,000”.

10 (2) SECURITIES EXCHANGE ACT OF 1934.—

11 (A) PENALTIES.—Section 32 of the Securi-  
12 ties Exchange Act of 1934 (15 U.S.C. 78ff) is  
13 amended—

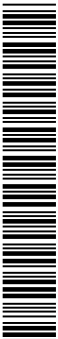
14 (i) in subsection (b), by striking  
15 “\$100” and inserting “\$10,000”; and

16 (ii) in subsection (c)—

17 (I) in paragraph (1)(B), by strik-  
18 ing “\$10,000” and inserting  
19 “\$500,000”; and

20 (II) in paragraph (2)(B), by  
21 striking “\$10,000” and inserting  
22 “\$500,000”.

23 (B) INSIDER TRADING.—Section 21A(a)(3)  
24 of the Securities Exchange Act of 1934 (15



1 U.S.C. 78u-1(a)(3)) is amended by striking  
2 “\$1,000,000” and inserting “\$2,000,000”.

3 (C) ADMINISTRATIVE PROCEEDINGS.—Sec-  
4 tion 21B(b) of the Securities Exchange Act of  
5 1934 (15 U.S.C. 78u-2(b)) is amended—

6 (i) in paragraph (1)—

7 (I) by striking “\$5,000” and in-  
8 serting “\$100,000”; and

9 (II) by striking “\$50,000” and  
10 inserting “\$250,000”;

11 (ii) in paragraph (2)—

12 (I) by striking “\$50,000” and in-  
13 serting “\$500,000”; and

14 (II) by striking “\$250,000” and  
15 inserting “\$1,000,000”; and

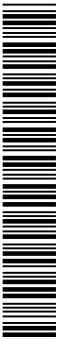
16 (iii) in paragraph (3)—

17 (I) by striking “\$100,000” and  
18 inserting “\$1,000,000”; and

19 (II) by striking “\$500,000” and  
20 inserting “\$2,000,000”.

21 (D) CIVIL ACTIONS.—Section 21(d)(3)(B)  
22 of the Securities Exchange Act of 1934 (15  
23 U.S.C. 78u(d)(3)(B)) is amended—

24 (i) in clause (i)—



1 (I) by striking “\$5,000” and in-  
2 serting “\$100,000”; and

3 (II) by striking “\$50,000” and  
4 inserting “\$250,000”;

5 (ii) in clause (ii)—

6 (I) by striking “\$50,000” and in-  
7 serting “\$500,000”; and

8 (II) by striking “\$250,000” and  
9 inserting “\$1,000,000”; and

10 (iii) in clause (iii)—

11 (I) by striking “\$100,000” and  
12 inserting “\$1,000,000”; and

13 (II) by striking “\$500,000” and  
14 inserting “\$2,000,000”.

15 (3) INVESTMENT COMPANY ACT OF 1940.—

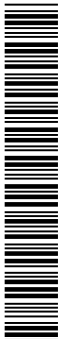
16 (A) INELIGIBILITY.—Section 9(d)(2) of the  
17 Investment Company Act of 1940 (15 U.S.C.  
18 80a–9(d)(2)) is amended—

19 (i) in subparagraph (A)—

20 (I) by striking “\$5,000” and in-  
21 serting “\$100,000”; and

22 (II) by striking “\$50,000” and  
23 inserting “\$250,000”;

24 (ii) in subparagraph (B)—



1 (I) by striking “\$50,000” and in-  
2 serting “\$500,000”; and

3 (II) by striking “\$250,000” and  
4 inserting “\$1,000,000”; and

5 (iii) in subparagraph (C)—

6 (I) by striking “\$100,000” and  
7 inserting “\$1,000,000”; and

8 (II) by striking “\$500,000” and  
9 inserting “\$2,000,000”.

10 (B) ENFORCEMENT OF INVESTMENT COM-  
11 PANY ACT.—Section 42(e)(2) of the Investment  
12 Company Act of 1940 (15 U.S.C. 80a–  
13 41(e)(2)) is amended—

14 (i) in subparagraph (A)—

15 (I) by striking “\$5,000” and in-  
16 serting “\$100,000”; and

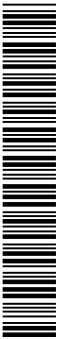
17 (II) by striking “\$50,000” and  
18 inserting “\$250,000”;

19 (ii) in subparagraph (B)—

20 (I) by striking “\$50,000” and in-  
21 serting “\$500,000”; and

22 (II) by striking “\$250,000” and  
23 inserting “\$1,000,000”; and

24 (iii) in subparagraph (C)—



1 (I) by striking “\$100,000” and  
2 inserting “\$1,000,000”; and

3 (II) by striking “\$500,000” and  
4 inserting “\$2,000,000”.

5 (4) INVESTMENT ADVISERS ACT OF 1940.—

6 (A) REGISTRATION.—Section 203(i)(2) of  
7 the Investment advisers Act of 1940 (15 U.S.C.  
8 80b–3(i)(2)) is amended—

9 (i) in subparagraph (A)—

10 (I) by striking “\$5,000” and in-  
11 serting “\$100,000”; and

12 (II) by striking “\$50,000” and  
13 inserting “\$250,000”;

14 (ii) in subparagraph (B)—

15 (I) by striking “\$50,000” and in-  
16 serting “\$500,000”; and

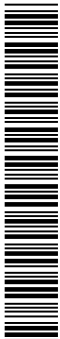
17 (II) by striking “\$250,000” and  
18 inserting “\$1,000,000”; and

19 (iii) in subparagraph (C)—

20 (I) by striking “\$100,000” and  
21 inserting “\$1,000,000”; and

22 (II) by striking “\$500,000” and  
23 inserting “\$2,000,000”.

24 (B) ENFORCEMENT OF INVESTMENT AD-  
25 VISERS ACT.—Section 209(e)(2) of the Invest-



1           ment advisers Act of 1940 (15 U.S.C. 80b–  
2           9(e)(2)) is amended—

3                   (i) in subparagraph (A)—

4                           (I) by striking “\$5,000” and in-  
5                           serting “\$100,000”; and

6                           (II) by striking “\$50,000” and  
7                           inserting “\$250,000”;

8                   (ii) in subparagraph (B)—

9                           (I) by striking “\$50,000” and in-  
10                          serting “\$500,000”; and

11                          (II) by striking “\$250,000” and  
12                          inserting “\$1,000,000”; and

13                   (iii) in subparagraph (C)—

14                           (I) by striking “\$100,000” and  
15                           inserting “\$1,000,000”; and

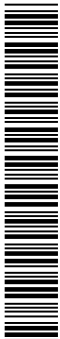
16                           (II) by striking “\$500,000” and  
17                           inserting “\$2,000,000”.

18           (c) AUTHORITY TO OBTAIN FINANCIAL RECORDS.—

19   Section 21(h) of the Securities Exchange Act of 1934 (15  
20   U.S.C. 78u(h)) is amended—

21                   (1) by striking paragraphs (2) through (8);

22                   (2) in paragraph (9), by striking “(9)(A)” and  
23                   all that follows through “(B) The” and inserting  
24                   “(3) The”;



1 (3) by inserting after paragraph (1), the fol-  
2 lowing:

3 “(2) ACCESS TO FINANCIAL RECORDS.—

4 “(A) IN GENERAL.—Notwithstanding sec-  
5 tion 1105 or 1107 of the Right to Financial  
6 Privacy Act of 1978, the Commission may ob-  
7 tain access to and copies of, or the information  
8 contained in, financial records of any person  
9 held by a financial institution, including the fi-  
10 nancial records of a customer, without notice to  
11 that person, when it acts pursuant to a sub-  
12 poena authorized by a formal order of investiga-  
13 tion of the Commission and issued under the  
14 securities laws or pursuant to an administrative  
15 or judicial subpoena issued in a proceeding or  
16 action to enforce the securities laws.

17 “(B) NONDISCLOSURE OF REQUESTS.—If  
18 the Commission so directs in its subpoena, no  
19 financial institution, or officer, director, part-  
20 ner, employee, shareholder, representative or  
21 agent of such financial institution, shall, di-  
22 rectly or indirectly, disclose that records have  
23 been requested or provided in accordance with  
24 subparagraph (A), if the Commission finds rea-  
25 son to believe that such disclosure may—



1 “(i) result in the transfer of assets or  
2 records outside the territorial limits of the  
3 United States;

4 “(ii) result in improper conversion of  
5 investor assets;

6 “(iii) impede the ability of the Com-  
7 mission to identify, trace, or freeze funds  
8 involved in any securities transaction;

9 “(iv) endanger the life or physical  
10 safety of an individual;

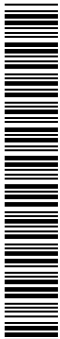
11 “(v) result in flight from prosecution;

12 “(vi) result in destruction of or tam-  
13 pering with evidence;

14 “(vii) result in intimidation of poten-  
15 tial witnesses; or

16 “(viii) otherwise seriously jeopardize  
17 an investigation or unduly delay a trial.

18 “(C) TRANSFER OF RECORDS TO GOVERN-  
19 MENT AUTHORITIES.—The Commission may  
20 transfer financial records or the information  
21 contained therein to any government authority,  
22 if the Commission proceeds as a transferring  
23 agency in accordance with section 1112 of the  
24 Right to Financial Privacy Act of 1978 (12  
25 U.S.C. 3412), except that a customer notice





1 shall not be required under subsection (b) or (c)  
2 of that section 1112, if the Commission deter-  
3 mines that there is reason to believe that such  
4 notification may result in or lead to any of the  
5 factors identified under clauses (i) through  
6 (viii) of subparagraph (B) of this paragraph.”;  
7 (4) by striking paragraph (10); and  
8 (5) by redesignating paragraphs (11), (12), and  
9 (13) as paragraphs (4), (5), and (6), respectively.

10 **SEC. 4. AUTHORITY TO ACCEPT PRIVILEGED AND PRO-**  
11 **TECTED INFORMATION.**

12 Section 24 of the Securities Exchange Act of 1934  
13 (15 U.S.C. 78x) is amended—

14 (1) by redesignating subsection (e) as sub-  
15 section (f); and

16 (2) by inserting after subsection (d) the fol-  
17 lowing new subsection:

18 “(e) **AUTHORITY TO ACCEPT PRIVILEGED AND PRO-**  
19 **TECTED INFORMATION.**—Notwithstanding any other pro-  
20 vision of law, whenever the Commission or an appropriate  
21 regulatory agency and any person agree in writing to  
22 terms pursuant to which such person will produce or dis-  
23 close to the Commission or the appropriate regulatory  
24 agency any document or information that is subject to any  
25 Federal or State law privilege, or to the protection pro-



1 vided by the work product doctrine, such production or  
2 disclosure shall not constitute a waiver of the privilege or  
3 protection as to any person other than the Commission  
4 or the appropriate regulatory agency to which the docu-  
5 ment or information is provided.”.

6 **SEC. 5. ACCESS TO GRAND JURY INFORMATION.**

7 Title VI of the Sarbanes-Oxley Act of 2002 is amend-  
8 ed by adding at the end thereof the following new section:

9 **“SEC. 605. ACCESS TO GRAND JURY INFORMATION.**

10 **“(a) DISCLOSURE OF CERTAIN MATTERS OCCUR-**  
11 **RING BEFORE GRAND JURY FOR USE IN ENFORCING SE-**  
12 **CURITIES LAWS.—**

13 **“(1) IN GENERAL.—**Upon motion of an attor-  
14 **ney for the government, a court may direct disclo-**  
15 **sure of matters occurring before a grand jury during**  
16 **an investigation of conduct that may constitute a**  
17 **violation of any provision of the securities laws to**  
18 **identified personnel of the Commission for use in re-**  
19 **lation to any matter within the jurisdiction of the**  
20 **Commission.**

21 **“(2) FINDING OF SUBSTANTIAL NEED RE-**  
22 **QUIRED.—**A court may issue an order under para-  
23 **graph (1) only upon a finding of a substantial need**  
24 **in the public interest.**



1       “(b) RESTRICTED USE OF INFORMATION.—A person  
2 to whom a matter has been disclosed under this section  
3 shall not use such matter other than for the purpose for  
4 which such disclosure was authorized.

5       “(c) DEFINITIONS.—As used in this section, the  
6 terms ‘attorney for the government’ and ‘grand jury infor-  
7 mation’ have the meanings given to those terms in section  
8 3322 of title 18, United States Code.”.

9       **SEC. 6. NATIONWIDE SERVICE OF PROCESS.**

10       (a) SECURITIES ACT OF 1933.—Section 22(a) of the  
11 Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by  
12 inserting after the second sentence the following: “In any  
13 action or proceeding instituted by the Commission under  
14 this title in a United States district court for any judicial  
15 district, subpoenas issued by or on behalf of such court  
16 to compel the attendance of witnesses or the production  
17 of documents or tangible things (or both) may be served  
18 in any other district. Such subpoenas may be served and  
19 enforced without application to the court or a showing of  
20 cause, notwithstanding the provisions of rule 45(b)(2),  
21 (c)(3)(A)(ii), and (c)(3)(B)(iii) of the Federal Rules of  
22 Civil Procedure.”.

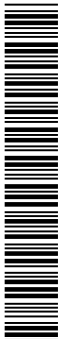
23       (b) SECURITIES EXCHANGE ACT OF 1934.—Section  
24 27 of the Securities Exchange Act of 1934 (15 U.S.C.  
25 78aa) is amended by inserting after the second sentence



1 the following: “In any action or proceeding instituted by  
2 the Commission under this title in a United States district  
3 court for any judicial district, subpoenas issued by or on  
4 behalf of such court to compel the attendance of witnesses  
5 or the production of documents or tangible things (or  
6 both) may be served in any other district. Such subpoenas  
7 may be served and enforced without application to the  
8 court or a showing of cause, notwithstanding the provi-  
9 sions of rule 45(b)(2), (c)(3)(A)(ii), and (c)(3)(B)(iii) of  
10 the Federal Rules of Civil Procedure.”.

11 (c) INVESTMENT COMPANY ACT OF 1940.—Section  
12 44 of the Investment Company Act of 1940 (15 U.S.C.  
13 80a–43) is amended by inserting after the fourth sentence  
14 the following: “In any action or proceeding instituted by  
15 the Commission under this title in a United States district  
16 court for any judicial district, subpoenas issued by or on  
17 behalf of such court to compel the attendance of witnesses  
18 or the production of documents or tangible things (or  
19 both) may be served in any other district. Such subpoenas  
20 may be served and enforced without application to the  
21 court or a showing of cause, notwithstanding the provi-  
22 sions of rule 45(b)(2), (c)(3)(A)(ii), and (c)(3)(B)(iii) of  
23 the Federal Rules of Civil Procedure.”.

24 (d) INVESTMENT ADVISERS ACT OF 1940.—Section  
25 214 of the Investment Advisers Act of 1940 (15 U.S.C.



1 80b–14) is amended by inserting after the third sentence  
2 the following: “In any action or proceeding instituted by  
3 the Commission under this title in a United States district  
4 court for any judicial district, subpoenas issued by or on  
5 behalf of such court to compel the attendance of witnesses  
6 or the production of documents or tangible things (or  
7 both) may be served in any other district. Such subpoenas  
8 may be served and enforced without application to the  
9 court or a showing of cause, notwithstanding the provi-  
10 sions of rule 45(b)(2), (c)(3)(A)(ii), and (c)(3)(B)(iii) of  
11 the Federal Rules of Civil Procedure.”.

12 **SEC. 7. AUTHORITY TO CONTRACT WITH PRIVATE COUN-**  
13 **SEL FOR LEGAL SERVICES TO COLLECT DE-**  
14 **LINQUENT JUDGMENTS AND ORDERS.**

15 Subsection (b) of section 4 of the Securities Exchange  
16 Act of 1934 (15 U.S.C. 78d(b)) is amended—

17 (1) in the subsection heading by striking “and  
18 Leasing Authority.—” and inserting “, Leasing Au-  
19 thority, and Contracting Authority.—”; and

20 (2) by adding at the end of such subsection the  
21 following new paragraph:

22 “(4) CONTRACTING AUTHORITY.—

23 “(A) IN GENERAL.—Notwithstanding any  
24 other provision of law, the Commission is au-  
25 thorized to enter into contracts to retain private

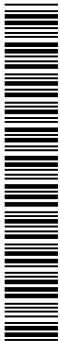


1 legal counsel to furnish legal services, including  
2 representation in litigation, negotiation, com-  
3 promise, and settlement, in the case of any  
4 claim of indebtedness resulting from any judg-  
5 ment or order (either by litigation or settle-  
6 ment) obtained by the Commission in any judi-  
7 cial action or administrative proceeding brought  
8 by or on behalf of the Commission. Private  
9 counsel retained under this paragraph may rep-  
10 resent the Commission in such debt collection  
11 matters to the same extent as the Commission  
12 may represent itself.

13 “(B) TERMS AND CONDITIONS OF CON-  
14 TRACT.—Each such contract shall include such  
15 terms and conditions as the Commission con-  
16 siders necessary and appropriate, and shall in-  
17 clude provisions specifying—

18 “(i) the amount of the fee to be paid  
19 to the private counsel under such contract  
20 or the method for calculating that fee;

21 “(ii) that the Commission retains the  
22 authority to represent itself, resolve a dis-  
23 pute, compromise a claim, end collection  
24 efforts, and refer a matter to other private  
25 counsel or to the Attorney General; and



1                   “(iii) that the Commission may termi-  
2                   nate either the contract or the private  
3                   counsel’s representation of the Commission  
4                   in particular cases for any reason, includ-  
5                   ing for the convenience of the Commission.

6                   “(C) PAYMENT OF FEES.—Notwith-  
7                   standing section 3302(b) of title 31, United  
8                   States Code, a contract under this paragraph  
9                   may provide that fees and costs incurred by pri-  
10                  vate counsel under such contracts are payable  
11                  from the amounts recovered.

12                  “(D) COMPETITION REQUIREMENTS.—  
13                  Nothing in this paragraph shall relieve the  
14                  Commission of the competition requirements set  
15                  forth in title III of the Federal Property and  
16                  Administrative Services Act of 1949 (41 U.S.C.  
17                  251 et seq.).

18                  “(E) COUNTERCLAIMS.—In any action to  
19                  recover indebtedness which is brought on behalf  
20                  of the Commission by private counsel retained  
21                  under this paragraph, no counterclaim may be  
22                  asserted against the Commission unless the  
23                  counterclaim is served directly on the Commis-  
24                  sion. Such service shall be made in accordance



1 with the rules of procedure of the court in  
2 which the action is brought.”.

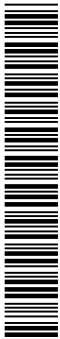
3 **SEC. 8. FAIR ACT AMENDMENTS.**

4 (a) CIVIL PENALTIES.—Section 308(a) of the Sar-  
5 banes-Oxley Act of 2002 (15 U.S.C. 7246(a)) is amended  
6 to read as follows;

7 “(a) CIVIL PENALTIES TO BE USED FOR THE RE-  
8 LIEF OF VICTIMS.—If in any judicial or administrative ac-  
9 tion brought by the Commission under the securities laws  
10 (as such term is defined in section 3(a)(47) of the Securi-  
11 ties Exchange Act of 1934 (15 U.S.C. 78c(a)(47))) the  
12 Commission obtains pursuant to such laws a civil penalty  
13 against any person, such civil penalty monies shall, on the  
14 motion or at the direction of the Commission, be added  
15 to and become part of a fund for the benefit of the victims  
16 of such violation.”.

17 (b) STUDY ON FEDERAL AND STATE SECURITIES  
18 ENFORCEMENT COORDINATION, COOPERATION, AND  
19 COMMUNICATION.—

20 (1) STUDY.—The Securities and Exchange  
21 Commission and an association of duly constituted  
22 representatives of State governments whose primary  
23 assignment is the regulation of the securities busi-  
24 ness within those States, shall jointly undertake and  
25 produce a study on improved coordination, coopera-





1       tion and communication between the Commission  
2       and State securities regulators.

3           (2) SUBJECT OF STUDY.—The study shall be  
4       prepared jointly by the Commission and the associa-  
5       tion described in paragraph (1), and shall be based  
6       on an initiative announced September 14, 2003, be-  
7       tween the Commission and the association aimed at  
8       improving coordination, cooperation, and commu-  
9       nication between the Commission and State securi-  
10      ties regulators.

11          (3) REPORT.—The results of the study shall be  
12      jointly reported to the Committee on Financial Serv-  
13      ices of the House of Representatives and the Com-  
14      mittee on Banking, Housing, and Urban Affairs of  
15      the Senate by September 14, 2005, or 1 year after  
16      the date of enactment of this Act, whichever is later.

17          (c) ADDITIONAL PROVISIONS.—Section 308 of the  
18      Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) is further  
19      amended—

20           (1) by redesignation subsections (c), (d), and  
21           (e) as subsections (e), (f), and (g), respectively; and

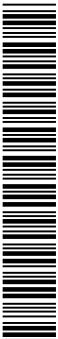
22           (2) by inserting the following after subsection  
23           (b):

24          “(c) USE OF INVESTOR RESTITUTION FUND BY  
25      STATES.—The Commission may allow a State that has re-



1 ceived penalty or disgorgement payments pursuant to an  
2 agreement or settlement with a broker or dealer or other  
3 party in an action concerning securities fraud to con-  
4 tribute those payments to a fund administered by the  
5 Commission for the purpose of making restitution pay-  
6 ments to investors, whether or not the Commission was  
7 a party to the agreement or settlement or had established  
8 such fund prior to the State's contribution. The Commis-  
9 sion shall have the authority otherwise available to it  
10 under the securities laws with respect to the administra-  
11 tion and distribution of such funds.

12       “(d) **UNDISTRIBUTED FUNDS TO BE USED FOR IN-**  
13 **VESTOR EDUCATION.**—In any judicial or administrative  
14 action in which a fund is created pursuant to subsection  
15 (a) or in which the Commission had obtained  
16 disgorgement, if the Commission determines (due to the  
17 size of the fund to be distributed, the number of investors,  
18 the nature of the underlying violation, or for other rea-  
19 sons) that it would be infeasible to distribute such fund  
20 or disgorgement to the victims of the violation, or if after  
21 distribution of the fund or disgorgement to victims there  
22 are excess monies remaining, the Commission may move  
23 for an order in a judicial action, or may issue an order  
24 in an administrative proceeding, requiring that the undis-  
25 tributed amount of the fund or disgorgement be used for



1 investor education programs administered by an estab-  
2 lished not-for-profit or governmental organization whose  
3 purposes include investor education and financial lit-  
4 eracy.”.

5 **SEC. 9. ENHANCED OVERSIGHT OF PERIODIC DISCLO-**  
6 **SURES BY ISSUERS.**

7 Within 1 year after the date of enactment of this Act,  
8 the Securities and Exchange Commission—

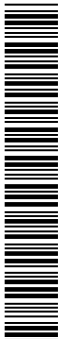
9 (1) shall conduct a thorough review of the fi-  
10 nancial statements contained in the most recent  
11 periodic disclosures filed with the Commission by the  
12 largest 250 reporting issuers, and as many other re-  
13 porting issuers as the Commission finds appropriate;

14 (2) shall query such issuers with respect to any  
15 confusing, ambiguous, or unclear statement in such  
16 disclosures that would be of interest to investors;

17 (3) shall require such issuers to respond fully to  
18 such queries, by such deadlines as the Commission  
19 may impose, and to clarify such statements as nec-  
20 essary for the protection of investors; and

21 (4) may require the issuer’s response to be ac-  
22 companied by an auditor’s opinion as to—

23 (A) whether that response sets forth the  
24 information presented in accordance with gen-  
25 erally accepted accounting principles, and



1 (B) whether the auditor reached that con-  
2 clusion after applying generally accepted audit-  
3 ing standards to the information presented in  
4 the response.

5 **SEC. 10. SENSE OF CONGRESS.**

6 It is the sense of Congress that the Administrator  
7 of the Investor Education Fund of the 2003 Global Re-  
8 search Analyst Settlement should award—

9 (1) \$5,000,000 of the Investor Education Fund  
10 in the form of competitive grants to economic edu-  
11 cation programs administered by national non-profit  
12 educational organizations whose primary purpose is  
13 improving the quality of minority and low-income in-  
14 dividuals' understanding of personal finance and ec-  
15 onomics; and

16 (2) \$5,000,000 of the Investor Education Fund  
17 in the form of competitive grants to economic edu-  
18 cation programs administered by national non-profit  
19 educational organizations whose primary purpose is  
20 improving the quality of elementary and secondary  
21 students' understanding of personal finance and eco-  
22 nomics.

